IN THE

Supreme Court of the United States

OCTOBER TERM, 1973
NO. 73-938

COX BROADCASTING CORPORATION, and
THOMAS WASSELL,
Appellants,

v.

MARTIN COHN,
Appellee.

ON APPEAL FROM THE
SUPREME COURT OF GEORGIA

MOTION TO DISMISS OR AFFIRM

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Appellee, in the above-entitled cause, moves this Honorable Court to dismiss the appeal herein on the grounds hereinafter set forth or, in the alternative, to affirm the judgment sought to be reviewed on appeal upon the grounds

that it is manifest that the questions upon which the decision of this cause rest are so unsubstantial as not to need further argument, and/or that the judgment rests on adequate statutory and constitutional principles.

STATEMENT OF THE CASE

Martin Cohn, Appellee herein, on May 8, 1972, filed a civil complaint in the Superior Court of Fulton County alleging that Appellants willfully, unlawfully and negligently invaded his privacy by disseminating the name and identity of his daughter Cynthia, the victim of multiple, brutal rapes, over the facilities of WSB-TV, an Atlanta television station owned and operated by Appellant Cox Broadcasting Corporation.

The rapes took place in August of 1971 and the telecasts referred to herein occurred some eight (8) months later on April 10, 1972, the date on which five of the six perpetrators entered pleas of guilty to rape or attempted rape. Murder charges against all the perpetrators were dismissed by the State on motions of *nolle prosequi*.

As there was no dispute as to any material fact, both parties moved for summary judgments based on affidavits.

On December 13, 1972, the Superior Court of Fulton County entered an order granting Appellee's motion for summary judgment as to liability and denying Appellants' motion for summary judgment.

On December 29, 1972, the Superior Court reaffirmed its decision of December 13, 1972 and certified the order for direct appeal.

On September 5, 1973, the Supreme Court of Georgia affirmed the denial of Appellants' motion for summary judgment, reversing the granting of Appellee's motion for summary judgment, and remanded the case for trial.

On September 19, 1973, Appellants' motion for a rehearing was denied by the Supreme Court of Georgia.

On December 17, 1973, Appellants filed a Jurisdictional Statement in this Court.

ARGUMENT

THE JUDGMENT OF THE SUPREME COURT OF GEORGIA RESTS UPON PROPER AND ADEQUATE STATUTORY AND CONSTITUTIONAL GROUNDS AND/OR NO SUBSTANTIAL QUESTION IS PRESENTED FOR REVIEW BY THIS COURT.

The Supreme Court of Georgia held in the case on appeal herein that the State, through its legislative body, had the constitutional authority to protect the anonymity of victims of rapes or attempted rapes by prohibiting their identification in the news media. The Court further held the statute expressed the legislative determination that the public identification of the victims of rapes or attempted rapes was not a matteer of public interest or general concern, *i.e.*,

newsworthy, and was hence not entitled to *First* or *Fourteenth Amendment* protection.

The statute in question is *Ga. Code Ann.* § *26-9901,* (Ga. Laws 1968, pp. 1335, 1336) and was a reenactment of an earlier statute (Ga. Laws 1911, pp. 179-180) and added references to modern means of communication, such as television and radio. The rationale behind the statute was to overcome the notorious reluctance of rape victims to testify as prosecution witnesses by protecting them and their families from the acute embarassment and humiliation peculiar to the offense of rape by giving such unfortunates a guarantee against mass publicity. *State v. Evjue,* 253 Wis. 146 (1948), 33 N.W.2d 305.

In interpreting this statute, the Supreme Court of Georgia, in deciding the instant case, held that "there simply is no public interest or general concern about the identity of the victim of such a crime as will make the right to disclose the identity of the victim rise to the level of *First Amendment* protection." *Cox Broadcasting Corporation, et al v. Cohn,* 231 Ga. 60, 200 S.E. 2d 127 (1973). The Court noted that the *First Amendment* is not absolute and that there is a necessary balancing by the Courts in protecting the privacy of an individual which is on a par with the interest in disclosure of the identity of such a person. In weighing those interests, the Court held that such disclosure was not protected because it was not a matter of a public interest or general concern. Citing the *Evjue* case, *supra,* the Court approved language stating that " . . . there is a minimum of social value in the publication of the identity of a female in connection with such an outrage. Certain it is that the

legislature could so find. At the most the publication of the identity of the female ministers to a morbid desire to connect the details of one of the most detestable crimes known to the law with the identity of the victim . . . There can be no doubt that the slight restriction of the freedom of the press . . . is fully justified."

It is appropriate to note that Georgia, as other States, maintains the anonymity of juveniles charged with crimes by preventing the press and public from being informed of the identity of such juveniles except by consent or court order. See, *Ga. Code Ann.* §*24A-3502* (Ga. Laws 1971, pp. 709, 751). The societal interest in anonymity, as expressed by legislative enactment, has been deemed to outweigh whatever interest there might be in disclosure. The two situations would seem to be analogous.

In this case, no legitimate public interest or general concern regarding the identity of the victim of a rape has been raised, nor did the Supreme Court of Georgia find any. What Appellants appear to be suggesting is an absolutist interpretation of the *First Amendment* which deprives the Legislature of any power to protect the privacy of certain of its citizens regardless of the social interest in doing so. Their position further seems to infer that what is newsworthy is up to the press to decide and not the judicial and legislative branches of government. This Court has consistently rejected this position, notably in *Miller v. California,* 413 U.S. 15, 23 (1973), wherein it was stated that the *First* and *Fourteenth Amendments* have never been treated as absolutes, citing *Breard v. Alexandria,* 341 U.S. at 642.

Appellee further notes that there is no restriction in the law whatever that prevents the press from fully airing the event itself with all the lurid details, including the judicial disposition of whatever prosecutions there might be. Only the identity of the victim is safeguarded.

Appellee submits that the statute in question protects the privacy and anonymity of a narrowly defined class of females from mass publicity in the press for very strong and cogent reasons. Because their identity is not of any conceivable public concern or interest, the *First Amendment* and the decisions of this Court cited by Appellants, particularly *Time, Inc. v. Hill,* 385 U.S. 374, 17 L. Ed. 2d 456 (1967), and *New York Times Company v. Sullivan,* 376 U.S. 264, 11 L. Ed. 2d 686 (1964), are wholly inapplicable for their holdings presuppose and assume that the matters in question are newsworthy and thus merit constitutional protection. Such is not the posture of this case.

CONCLUSION

Appellee, therefore, respectfully requests this Court, on the basis of arguments set forth herein, to dismiss the appeal from the Supreme Court of Georgia and/or in the alternative, to affirm that Court's judgment.

Respectfully submitted,

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